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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,477	08/31/2001	Satoru Tange	SHC0144	1533

7590 11/28/2003

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EXAMINER
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AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 11/28/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/944,477

Applicant(s)

TANGE, SATORU

Examiner

Jeff H. Aftergut

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ness in view of Sisson further optionally taken with Austin et al for the same reasons as set forth in paper no. 12, paragraph 4.

***Response to Arguments***

3. Applicant's arguments filed 10-20-03 have been fully considered but they are not persuasive.

The applicant essentially argues that the reference to Sisson is only forming a mixed assembly of fibers of inelastic but elongatable fibers and elastic fibers and not separate layers of elastic and inelastic but elongatable fibers (where the elongatable fibers are permanently distorted). The applicant takes this position and then specifically states that it therefore would not satisfy the requirements of the claim when used in Ness as the nonwoven would have included the use of elastic fibers therein. The applicant is advised that the reference to Sisson suggested that distinct layers would have been formed from in the operation (i.e. distinct nonwoven layers) followed by bonding of these distinct non-woven layers, see column 13, lines 48-52. clearly one embodiment described by Sisson did in fact form a single layer of the material as a single nonwoven by mingling the fibers at laydown as depicted in Figure 6 for example while another embodiment envisioned by Sisson included formation of distinct nonwoven layers which were later subjected to bonding, see Figure 19 for example where the layers were brought down upon the vacuum conveyor as separate layers. Clearly, the ordinary artisan would have recognized that

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one skilled in the art at the time the invention was made would have understood that Sisson suggested the joining of separate layers of the materials of nonwoven was suggested by Sisson. To utilize the nonwoven (distinct layer) of Sisson in Ness would have been within the purview of the ordinary artisan for the same reasons as previously noted. It should be noted that Sisson desired to the final assembly to be puckered in a like manner to that of Ness. Note additionally that the reference suggested that multiple separate layers of material would have been applied to each other with the elastic layer there between and the assembly would have been bonded with spot bonds in Sisson, see column 36, lines 20-27. Note that this is in reference to Figure 19 as noted above, see column 36, lines 28-40, for example. The reference to Ness clearly suggested the joinder of two inelastic layers of material between the elastic and then the stretching of the arrangement. The applicant is advised that those skilled in the art at the time the invention was made would have readily appreciated that one would have supplied the nonwoven layer of Ness as one of the nonwoven layers of Sisson and only the expected results would have been attained.

Regarding the hindsight argument, the applicant is advised that there is no hindsight where specific reasons have been provided as to why one skilled in the art would have made the combination. The reference to Ness, as discussed above, suggested that one skilled in the art would have employed a nonwoven layer for one of the substrates. The reference to Sisson suggested a nonwoven layer for one of the substrates wherein one skilled in the art would have been led to incorporate the techniques of the reference as Sisson desired to attain the same type of elastic composite laminate as Ness. Certainly, one skilled in the art would have been led to look to Sisson for at least the selection of a specific nonwoven which would have acted in the manner that Ness required (such as the nonwoven of Sisson).

The applicant addresses the reference to Austin but merely states that the reference did not cure the deficiencies of the other references. However, no such deficiencies exist as addressed above.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

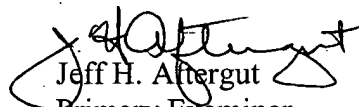
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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Jeff H. Aftergut  
Primary Examiner  
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JHA

November 25, 2003